

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

74-1866

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
against

BOLIVAR IRIZARRY, *et al.,*
Defendants,

BOLIVAR IRIZARRY,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX TO BRIEF OF DEFENDANT-APPELLANT,
BOLIVAR IRIZARRY.

METRICK & OSTROW,
Attorneys for Defendant-Appellant,
233 Broadway,
New York, N. Y. 10007
BA 7-3620.

DAVID G. TRAGER,
United States Attorney, Attorney for
Plaintiff-Appellee,
225 Cadman Plaza East,
Brooklyn, N. Y. 11201
596-5700.

AUG 22 1974

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DOCKET ENTRIES

D. C. Form No. 100
CRIMINAL DOCKET

72 CR 176

A1

NEAHER, J. COO

TITLE OF CASE	ATTORNEY
THE UNITED STATES	For defendant
vs.	Michael Dine
JOSE VALENZUELA-CORREA	15 Columbus
X BOLIVAR IRIZARRY	New York, N.Y.
X MANUEL GONZALEZ	541-7740
JOHN DOE, also known as "Mario C."	
	For Defendant: VALENZUELA
	Irving Kornblum 207-
	15 Park Row NYC 100
Did import narcotics into USA not part of cargo, etc.	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	BY
Fine,					
Clerk,					
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
10-19-72	Before Costantino J - Indictment filed
10-31-72	Before Costantino J - Case called - Defts CORREA IRIZARRY & GONZALEZ present - defts arraigned and each enter a plea of not guilty - motion for reduction of bail as to deft IRIZARRY & Motion granted - Bail reduced to \$100,000 with 10% cash - case set down for Trial on Dec. 4, 1972 at 10:00 am - Bench Warrant ordered for John DOE.
10-31-72	Notice of appearance filed for JOSE VALENZUELA-CORREA (Irving Kornblum)
11-1-72	Magistrate's file 72 M 1883 inserted into CR file.
11-17-72	Notice of Motion filed, ret. Nov. 28, 1972, for Discovery, suppression evidence, Bill of Particulars, adjournment of Trial date from Dec. 4, 1972 to Feb. 1973, etc. (Manuel Gonzalez)

DATE	PROCEEDINGS
1-28-72	Before Costantino J - Case called - motion for Discovery adjd to Dec. 1, 1972 . (Manuel Gonzalez)
1/29/73	Notice of Motion filed(for all defts) returnable 12/1/72.
2-1-72	Before COSTANTINO-J.- Case called- Deft. IRIZARRY's motion for severance adj'd to 12-4-72 at 11:00 A.M.
2-1-72	Before COSTANTINO- J.- Case called- Deft.GONZALEZ's motion for discovery & inspection, etc. adj'd. to 12-4-72 at 11:00 A.M.
12/4/72	Before COSTANTINO, J.- Case called- Attys to meet and agree upon of Discovery and Inspection. Motion for severance as to deft IRIZARRY is denied.- Trial adjd to 1/8/73 at 10:00 A.M.
1/2/73	Before COSTANTINO, J.- Case called-Deft IRIZARRY and Atty Mr. Osterman Motion to substitute by Hammer is denied -Motion to reduce bail as to IRIZARRY is reduced to \$35,000.00 surety bond-Case set down for trial at 10:00 A.M.
1/3/73	Before COSTANTINO, J.- Case called- Trial adjd to 1/15/73 at 10:00 A.M.
-11-73	Affidavit of ERNEST H. HAMMER filed.
1/11/73	By COSTANTINO, J.- Memorandum and Order filed denying defts motion for taking deposition (Manuel Gonzalez)
1/15/73	Before COSTANTINO, J.- Case called- Defts Correa and Irizarry and Atty present-Interpreter E. RODRIGUEZ sworn- Deft Correa withdraws his plea of not guilty and on his own enters a plea of guilty to ct. 2-Sentence adjd without date - Deft in custody.
1/15/73	Affidavit of atty ANDREW M. LAULER filed, in further support of defts motion to take the deposition of Mario Mena pursuant to Rule 15 of the Federal Rules of Criminal procedure.
1/20/73	Affidavit of atty ANDREW M. LAULER filed
2-73	Stenographers transcript dated Jan. 15, 1973 filed
2/4/73	Affidavit filed requesting an order to prevent a failure of justice, Court enter an order pursuant to the provisions of Rule 15, etc., permitting depositions to be taken in Chile.
2/4/73	Before COSTANTINO, J.- Case called- Motion argued and denied.
2/9/73	Before COSTANTINO, J.- Case called- Defts and attys present-Deft IRIZARRY having been advised of his own rightw by the court and on his own behalf withdraws his plea of ^{not} guilty to ct. 3 and enters a plea of guilty to ct. 3-Sentence adjd without date.-Motion to suppress as to deft GONZALES hearing ordered and begun-Hearing concluded -Motion denied.
3/0/73	Before COSTANTINO, J.- Case called- Deft MANUEL GONZALEZ and atty present Trial ordered and begun-Trial cont'd to 1/31/73 at 10:00 A.M.

DATE	PROCEEDINGS
1/31/73	Before COSTANTINO, J.- Case called- Deft and Atty present and interpreter -Trial resumed- Trial cont'd to 2/1/73 at 10:00 A.M.
2/1/73	Before COSTANTINO, J.- Case called- Deft and Atty present-Trial resumedGovt rests-Motion to dismiss the indictment-Motion denied with leave to renew-Trial cont'd to 2/2/73 at 10:00 A.M.
2/2/73	Before COSTANTINO, J.- Case called- Deft and his atty present-Trial resumed- Trial cont'd to 2/5/73 at 11:00 A.M.
2/6/73	Stenographer's transcripts of 1/15/73, 1/29/73, 1/30/31, 2/1/73, 2/2/73 and 2/5/73 filed.
2/6/73)	Before COSTANTINO, J.- Case called- Deft and atty present-Trial resumed- Motion to dismiss counts 2,3,5,6, and 7 are granted (as to deft MANUEL GONZALEZ)-Trial to 2/6/73
2/6/73)	Before COSTANTINO, J.- Case called- Deft GONZALEZ and counsel present-Trial resumed-Jury returns for further deliberation Jury returns and renders a verdict of guilty as to cts 1 and 4- Jury polled and discharged-Bail cont'd -Sentence adjd w/o date.
2/5/73	By COSTANTINO, J.- Order of Sustenance and Lodging filed. (& Trans)
2/6/73	Affidavit filed re: that the court suppress all items seized as a result of the search.
2/6/73	Deft GONZALEZ's Memorandum of Law in support of Affidavit.
3-9-73	Before COSTANTINO J - Case called - Deft JOSE VALENZUELA CORREA & counsel Irving Kornblum present - deft sentenced to imprisonment on count 3 for 3 years under 18:3651 - deft to serve 5 months. Balance of sentence is suspended and the deft is placed on probation for remainder of sentence and 10 years special parole. Interpreter Emil Rodriguez present and sworn. Deft is to be deported immediately. On motion of Asst. U.S. Atty Stechel counts 1, 2, 4, 5, 6 & 7 are dismissed.
3-9-73	Judgment and Commitment and Order of Probation filed - certified copies to Marshal and Probation. (JOSE VALENZUELA-CORREA)
3/23/73	Stenographer's transcript of 2/6/73 filed.
4/2/73	Before COSTANTINO, J.- Case called- Motion to adjourn sentence : adjd to 4/3/73
4/3/73	Before COSTANTINO, J.- Motion to adjourn sentence granted-Sentence adjd to 4/27/73 (M. Gonzalez)
4/6/73	Before COSTANTIN), J.- Case called- Sentence adjd to 4/9/73 (IRIZARRY) and 4/27/73 for (GONZALEZ)

DATE	PROCEEDINGS
4-9-73	Before COSTANTINO J - Case called - Deft BOLIVAR IRIZARRY & counsel Seymour Ostrow present - deft sentenced to imprisonment for 8 years on count 3 - pursuant to 18:4208(a)(2) and special parole of 5 years pursuant to 18:4208(a)(2). On motion of Asst US Atty Stechel counts 4 and 7 are dismissed.
4-9-73	Judgment & Commitment filed - certified copies to Marshal (IRIZARRY)
4/12/73	Certified conv of Judgment and Commitment ret'd and filed. Deft deliv'd to Fed. Det. Hqs. (B. IRIZARRY)
4/23/73	Letter dated 4/16/73 filed from deft IRIZARRY re: reduction of sentence
4-27-73	Before Costantino J - Case called - adj'd to May 11, 1973 (sentence of deft Manuel Gonzalez)
5-11-73	Before COSTANTINO J - Case called - Deft GONZALEZ & counsel P. De Lora present. Deft moves to set aside Jury verdict - Motion denied - deft sentenced for a period of 10 years on count 1 and 5 years on count 4 - to run concurrently pursuant to 18:4208(a)(2) and special parole of 5 years. Bail increased to \$10,000 cash to be posted by May 16, 1973. Deft is released under custody of his attorney pending Notice of Appeal.
5-11-73	Judgment & Commitment filed - certified copies to Marshal (GONZALEZ)
5-11-73	Notice of Appeal filed (GONZALEZ)
5-11-73	Docket entries and duplicate of Notice of Appeal mailed to the C of A (GONZALEZ)
5/14/73	By SCHIFFMAN, MAG. - Order for Acceptance of Cash Bail filed.
5/18/73	Stenographer's transcript of Jan. 29, 1973 filed.
5/29/73	Stenographer's transcript filed dated May 11, 1973.
6/1/73	By COSTANTINO, J. - Memorandum and Order filed denying defts motion for reduction of sentence (IRIZARRY) - Order dated May 18, 1973 rec'd and filed 6/4/73
6/7/73	Stenographer's transcript of 4/3/73 filed.
6/7/73	By COSTANTINO, J. - Memorandum and Order filed that the deft B. IRIZARRY's motion for a reduction of sentence is denied.
6/7/73	Stenographer's transcript of 11/28/73 filed.
6/11/73	Motion for Reduction of sentence filed (BOLIVAR IRIZARRY)
6/11/73	Letter of 5/5/73 from deft BOLIVAR-IRIZARRY filed (rec'd from chambers)
6/12/73	Stenographer's transcript of 4/9/73 filed.
6/19/73	Deft Gonzalez's Requests to Charge filed.
6/20/73	Index to Record on Appeal certified and handed to Mr. Alfred L. Toomey for delivery to the C. of A. (M. GONZALEZ)
6-21-73	Magistrate's file 73 M 695 inserted into CR file.

DATE	PROCEEDINGS
6-22-73	Acknowledgment received from C of A for receipt of Record on Appeal (Gonzalez)
7/5/73	Letter dated June 28, 1973 filed from Deft Irizarry.
7/5/73	Covv of Letter filed dated 7/5/73 from Paul Heyman to deft
7/27/73	Notice of Motion filed(Deft Bolivar Irizarry)- re: reduction of sentence (Judge to set date)
9/5/73	Stenographers Transcript dated 1/24/73 ^{and 4/27/73} /filed
9-14-73	Before COSTANTINO J - Case called - motion submitted for modification of sentence as to deff IRIZARRY - Decision Reserved
9-20-73	By Schiffman, Magistrate - Order for acceptance of cash bail filed (GONZALEZ)
9/24/73	By COSTANTINO,J.- Memorandum and Order filed denying defts appl for a reduction of sentence(BOLIVAR IRIZARRY)
9/27/73	Supplemental Index ^{to record} Index on appeal certified and mailed to Court of Appeals (GONZALEZ)
10/3/73	Acknowledgment received from Court of Appeals and filed for receipt of Supplemental record on appeal (GONZALEZ)
11-21-73	Stenographers Transcript dated 9-14-73 filed
1-17-74	Record on Appeal and Supplemental Index to Record ret'd from Court of Appeals. Acknowledgment mailed to Clerk for receipt of same. (GONZALEZ)
1-30-74	Copy of Opinion and Judgment received from the Court of Appeals filed reversing judgment and that the action be remanded to said District Court for further proceeding in accordance with the opinion of the C of A. (<i>Gonzalez</i>)
2-7-74	Before NEAHER, J - case called - Def't GONZALEZ & counsel Michael Dierenzo present - application \$10,000 Bail exonerated - bail stands at \$10,000 surety bond - 30 days to take deposition - Order to be submitted. Set down for Trial Mar. 11, 1974.
2-7-74	Notice of Appearance filed (MANUEL GONZALEZ)
2-13-74	By BARTELS J - Order releasing bail filed (MANUEL GONZALEZ)
3-4-74	Before NEAHER, J - case called - motion granted as indicated - addid to 4-16-74 for status and report. (Manuel Gonzalez)
3-14-76	Stenographers transcript dated 2-7-74 filed. XXXXXXXXXXXXX of XXXXXXXXXXXXX and XXXXXXXXXXXXXXX.

DATE	PROCEEDINGS
-21-74	Letter to A.U.S.A. Pattison from Alfred Toombs, esp. filed re: [unclear] of one Mario Mons Flores in Santiago, Chile
-26-74	Before COSTANTINO J. - case called - motion - Rule 25 - etc. as to deft IRIZARRY - motion argued - granted and denied as in [unclear]
-5-74	Before COSTANTINO J. - case called - adjd to April 16, 1974 - (BOLIVAR IRIZARRY)
-16-74	Before COSTANTINO J. - case called & adjd to 4-19-74 for all purposes - (IRIZARRY)
-16-74	Before NEAHER, J - case called & adjd to May 21, 1974 (GONZALEZ)
-19-74	Before COSTANTINO J. - case called - deft Irizarry & counsel present - deft moves to set aside guilty plea - case adjd to May 3, 1974 for hearing
-22-74	Stenographers transcript dated April 19, 1974 filed (copy) - deft Bolivar Irizarry.
-27-74	Before COSTANTINO, J. - Case called - Deft and Govt waive hearing - Govt to submit brief within one week (IRIZARRY) - - Note: all entries crossed off are entered in Civil 74C-743.
5-21-74	Before NEAHER, J - case called - deft Manuel Gonzalez & counsel L. Toombs present - case adjd to June 4, 1974.
-23-74	Certified copy of Order received from court of appeals and filed denying deft Irizarry's petition for a writ of mandamus (BOLIVAR IRIZARRY and SEYMOUR OSTROW)
-4-74	Before Neaheer, J - case called - deft Gonzalez & atty present - case adjd to August 5, 1974.

A TRUE COPY	
DATED	7/24
BY	CLERK
	DEPUTY CLERK

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DOCKET

TITLE OF CASE

UNITED STATES OF AMERICA

23.

105711 22-99 27

ATTENTION

For Planting:

7-10-1944

U. S. A. 1991

For Respondent:

1523-1524

233 Bway., N. Y.,

N.Y. 1.

Tel: BA 7-3520

BASIS OF ACTION: Pursuant to Sec. 2255

JURY TRIAL CLAIMED

ON

[illegible]

ABSTRACT OF COSTS

[illegible]

RECEIPTS, REMARKS, ETC.

ONLY COPY AVAILABLE

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED FBI
1-74	Notice of Motion filed for reduction of sentence (re: 72-1-1176 - Re: Bolivar Irizarry) WITHOUT PREJUDICE TO THE GOVERNMENT.	
15-74	Memorandum of Law filed.	
15-74	Memorandum of Law filed.	
26-74	Before COSTANTINO, J. Case called motion under Rule 35, etc. as to deft. Irizarry - MOTION ARGUED, GRANTED and denied as indicated. (This entry transferred from 72-CR-1176)	
5-74	BEFORE COSTANTINO, J. Case called adjourned to April 16, 1974	
19-74	BEFORE COSTANTINO, J: Case called. Deft. IRIZARRY and counsel present. Deft. moves to set aside guilty plea - case adjourned to May 3, 1974 for hearing.	
22-74	Stenographers transcript dated April 19, 1974 filed (copy) deft. Bolivar Irizarry (above entries were transferred from 72-Cr-1176)	
3-74	Before COSTANTINO, J. Case called. Deft. and Government waive hearing. Government to submit brief within one week (IRIZARRY)	
24-74	BY COSTANTINO, J. THE MOTION TO VACATE THE JUDGMENT IS DENIED. SO ORDERED. (See Memo., etc.)	
4-74	NOTICE OF APPEAL FILED	
4-74	Copy of Notice of Appeal was on this day mailed to Clerk. U.S.C.A. 1974	
4-74	= Instructions re preparation of record together with forms C & D were on this day personally handed to the attorney for defendant herein, etc. <i>2/2/74</i>	

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MEMORANDUM AND ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
BOLIVAR IRIZARRY

v.

UNITED STATES OF AMERICA
-----x

:
:
74-CR-743

:
:
MEMORANDUM and ORDER

MAY 24 1974

A p p e a r a n c e s :

Hon. Edward John Boyd V, Acting United States Attorney,
E.D.N.Y., by T.R. Pattison, Ass't United States Attorney

Metrick and Ostrow, Esqs., 233 Broadway, New York City,
by Seymour Ostrow, Esq.

On January 29, 1973 the petitioner pleaded guilty to the third count of a seven count indictment (72-CR-1064) charging him with conspiring to possess and distribute cocaine, in violation of 21 U.S.C. §§ 841, 346. He was sentenced on April 9, 1973 to a term of eight years plus a special parole term of five years. He now moves (a) to reduce the special parole term to three years, pursuant to Federal Rule of Criminal Procedure 35; (b) to correct a clerical error in the Order of Judgment and Commitment, Federal Rule of Criminal Procedure 36; and (c) to vacate the judgment entirely, pursuant to 28 U.S.C. § 2255.

The motion to reduce the special parole term is grounded upon the court's statement at the time of the plea that the maximum sentence which could be imposed was "\$25,000 and/or 15 years in jail, plus three years special parole." After a review of the record the court holds that a sentence reduction is appropriate. Accordingly, the special parole term is reduced to three years.

As to the motion to correct the Order of Judgment and Commitment, it will be corrected to reflect that the petitioner pleaded guilty to violations of 21 U.S.C. §§ 841

and 846, not sections 846 and 955.

The motion to vacate the judgment is based upon Mr. Irizarry's allegation that he did not "knowingly plead guilty," and further that a factual basis for the plea was not established on the record. A review of the file in this case reflects the following relevant facts. On November 29, 1972 in an affidavit submitted in support of a discovery motion in this case the petitioner stated that he met an individual at a bar who offered him \$100 to pick up a package at a motel the following afternoon. He admitted going to the motel room where he was arrested by narcotics agents. On January 15, 1973 a codefendant, Jose Valenzuela-Correa, pleaded guilty and admitted his involvement with the petitioner and another codefendant.

The petitioner pleaded guilty on January 29, 1973. He stated that he was told by an individual who he did not name to pick up a package which he knew to contain cocaine, and further that as a result of that conversation he went to pick up the package at a hotel room where he met Valenzuela-Correa.

In response to the court's Rule 11 inquiries, the

petitioner asserted that he was waiving his constitutional right to a trial by jury, and that he was pleading guilty voluntarily. The court explained to the petitioner that he was pleading guilty to a felony and could be sentenced to as much as a \$25,000 fine and/or fifteen years imprisonment. After the petitioner responded that he understood that and still wished to plead guilty, the court accepted his plea.

3) Thereafter, petitioner brought a motion for a reduction of sentence which was heard on September 14, 1973. In the arguments in support of that motion his guilt of the crime was admitted again. It was also reiterated at that time that the petitioner had pleaded guilty voluntarily. Nowhere in the record prior to the present motion was petitioner's inability to understand the proceedings brought to the court's attention. It should be noted that petitioner was represented by the same counsel at every appearance before the court and that that counsel continues to represent the petitioner.

Federal Rule of Criminal Procedure 11 requires that the court establish that the plea of guilty is voluntarily entered, that the defendant understands the nature of the

charge and the consequences of pleading guilty, and that there is a factual basis for the plea. McCarthy v. United States, 394 U.S. 459 (1969). No allegation has been made here that the plea was involuntary. Indeed, no such allegation could be made in light of the extensive record on this case. As to whether Mr. Irizarry understood the consequences of his plea, the record is equally clear. He was informed of the maximum term of incarceration and that the sentence would be imposed by the court alone.

The petitioner's allegation is apparently that despite his counsel's advice he did not understand the nature of a conspiracy at the time of his plea. A conspiracy is, of course, an agreement to accomplish some unlawful purpose. It is made up of the agreement and some overt act to further the purpose. [Petitioner had on several occasions admitted agreeing to "pick up" a package which he knew to contain cocaine.] He stated that he had met with an individual who gave him instructions as to what to do with the package. Later he was caught while attempting to pick up the package. This was an illegal combination to possess and distribute cocaine - surely a conspiracy. Whether Mr. Irizarry knew that legally he was engaged in a conspiracy is irrelevant.

since he was, in fact, so engaged. At the time of the plea the court specifically noted that someone else must be involved for there to be a conspiracy. Mr. Irizarry then said that another person had told him to pick up the package.

(4) { The third essential for accepting a guilty plea - that of the court being satisfied that a factual basis for it exists - is related to the defendant's understanding of the nature of the charge. It was established when the petitioner admitted agreeing to pick up the package of cocaine. Although petitioner answered, "No" to the court's question, "Was there anyone else that you were working with in this agreement," it clearly appears on the record that petitioner had admitted to agreeing to pick up the package. In addition, the court was aware of the circumstances surrounding the incident because of Mr. Valenzuela-Correa's plea on January 15, 1973. A court need not make further inquiries if there is other information available to satisfy it of the factual basis of the plea. North Carolina v. Alford, 400 U.S. 25 (1970).

In that the plea was entered voluntarily, with a

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full understanding of the nature of the charges and consequences of the plea, and the court being satisfied that a factual basis did exist, the motion to vacat the judgment is denied.

So Ordered.

U. S. D. J.

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MINUTES OF PLEA

1
2 THE CLERK: Criminal cause for trial, United
3 States of America versus Bolivar Irizarry, Manuel
4 Gonzalez, John Doe also known as Mario C.

5 THE COURT: The case is ready for trial?

6 MR. STECHEL: The Government is ready,
7 your Honor.

8 MR. OSTROW: Your Honor, I have an application
9 with respect to the defendant Bolivar Irizarry.
10 If the Court please, this defendant offers to
11 plead guilty to the third count of the indictment
12 and withdraws his plea of not guilty which has
13 been previously entered.

14 THE COURT: Is there any objection by the
15 U.S. Attorney?

16 MR. STECHEL: No.

17 THE COURT: No objection. How many counts
18 is he charged with?

19 MR. OSTROW: Three counts.

20 THE COURT: To which count is he pleading
21 guilty.

22 MR. OSTROW: The conspiracy count. Count
23 three of the indictment.

24 THE COURT: Count three of the indictment.
25 All right. That's in reference to Mr. Gonzalez.

1
2 MR. OSTROW: No. This is Mr. Irizarry.

3 THE COURT: Irizarry, I am sorry.

4 Did you say count one?

5 MR. STECHER: Count three.

6 THE COURT: All right, count three. That's
7 the conspiracy count.

8 MR. OSTROW: That's correct.

9 THE COURT: Now, Mr. Irizarry, did you
10 understand your lawyer to say that you are with-
11 drawing your plea of not guilty to count three of
12 the indictment and you are pleading to it?

13 DEFENDANT IRIZARRY: Yes.

14 THE COURT: You understand by pleading
15 guilty to that count, that you are pleading guilty
16 to a crime?

17 DEFENDANT IRIZARRY: Yes.

18 THE COURT: Do you realize that this crime
19 is a felony under the laws of the United States,
20 and that the crime which they say you committed,
21 violated the laws of the United States? Do you
22 understand that?

23 DEFENDANT IRIZARRY: Yes.

24 THE COURT: You understand likewise, in any
25 event, that you have a right to stand trial.

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2 That's why you are here this morning. You have
3 a right to have your issues determined, whether
4 it be guilty or not guilty -- have it determined
5 by a jury.

6 DEFENDANT IRIZARRY: Right.

7 THE COURT: You have a right to have witnesses
8 proceed to the witness stand and testify before you?
9 You have the right of presumption of innocence
10 throughout the entire trial until such time as the
11 jury may find you guilty or innocent in your behalf.
12 You understand that?

13 DEFENDANT IRIZARRY: Yes.

14 THE COURT: Do you waive these Constitutional
15 rights?

16 DEFENDANT IRIZARRY: Yes, I do.

17 THE COURT: All right. You waive them.

18 Do you also understand -- withdrawn.

19 Has anyone made any promises, or used any
20 force to coerce you in any way whatsoever, either
21 the U.S. Attorney, your own attorney, or has anyone
22 made a promise to you of what the Court would
23 do in reference to sentencing you or any other
24 promise?

25 DEFENDANT IRIZARRY: No.

1
2 THECOURT: Are you now pleading guilty of
3 your own free will?

4 DEFENDANT IRIZARRY: Yes.

5 THECOURT: Now, the charge to which you are
6 pleading guilty, under the United States Code
7 is a charge of conspiracy.

8 Now, you must tell this Court in your own
9 words, what conspiracy you say you committed?

10 DEFENDANT IRIZARRY: Well, I know I was --
11 that I was supposed to pick up at the time --

12 THE COURT: What's that?

13 DEFENDANT IRIZARRY: I knew what I was
14 going to pick up. That it was cocaine.

15 THE COURT: You were going to pick up
16 cocaine?

17 DEFENDANT IRIZARRY: Right.

18 THE COURT: Of course, you can't conspire
19 with yourself.

20 DEFENDANT IRIZARRY: No.

21 THECOURT: In order to conspire, you have
22 to have somebody else to conspire with. Is that
23 true?

24 DEFENDANT IRIZARRY: Yes.

25 THE COURT: Was there anyone else that you

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were working with in this agreement?

DEFENDANT IRIZARRY: No. I was told by someone else to pick up that package.

THE COURT: You were told by someone else to pick up that package?

DEFENDANT IRIZARRY: Yes.

THE COURT: And as a result of that conversation with someone else, you then did pick up the package?

DEFENDANT IRIZARRY: I went to pick it up and I was caught before I picked it up.

THE COURT: What's that?

DEFENDANT IRIZARRY: I was caught by the Federal agents.

THE COURT: You were caught. But you went with the --

MR. STECHEL: Could we first --

THE COURT: From whom?

DEFENDANT IRIZARRY: This fellow named at the bar --

MR. STECHEL: From whom did you pick up the cocaine?

DEFENDANT IRIZARRY: I went to a hotel room. The guy -- Valenzuela. That's the name.

1
2 THE COURT: Do you understand by pleading
3 guilty to this, that you can be sentenced to a
4 maximum of \$25,000 and/or 15 years in jail, plus
5 three years special parole? That is the maximum
6 this Court can sentence you for this crime you
7 committed. Do you understand that?

8 DEFENDANT IRIZARRY: Yes.

9 THE COURT: There have been no promises made
10 to you with reference to the sentence which this
11 Court will grant to give to you?

12 DEFENDANT IRIZARRY: No.

13 THE COURT: The Court accepts the plea.

14 MR. STECHEL: Thank you.

15 THE COURT: The balance of the case is on
16 trial.

17 MR. LAWLER: Your Honor, the defendant
18 Gonzalez is ready for trial. We previously made
19 a motion to take the deposition of a witness whom
20 we have described as essential to our case. While
21 we are ready for trial, I do not want that in
22 any way regarded as a waiver of --

23 THE COURT: No. Your rights are reserved
24 to that deposition throughout the entire trial.

25 MR. LAWLER: I also indicated in the last

1
2 affidavit I had submitted, that Mr. Hammer was
3 down in Santiago and that the witness had agreed
4 to have his deposition taken, although he would
5 not agree to come to the -- I know this is hearsay--
6 but Mr. Hammer has returned with such a declaration
7 in writing. I just wanted to complete the record
8 on that.

9 THE COURT: All right. You may put that
10 into evidence in any event. But this Court has
11 made its ruling for the reason believing that the
12 deposition was not material to the issues in this
13 case, nor could it bind anyone in this case.

14 MR. LAWLER: Your Honor, we also have
15 previously made a motion to suppress. The motion
16 to suppress is directed at a search warrant to the
17 safety deposit box of the defendant Gonzalez. And
18 with respect to that motion, I would, at this time,
19 hand up an additional affidavit. There have been
20 previous affidavits submitted in support of that
21 application and also a memorandum of law, your Honor.

22 MR. STECHER: Do you have another copy of
23 this?

24 Your Honor, the Government is prepared to
25 proceed on a motion to suppress.

1
2 THE COURT: Sure.

3 MR. STECHER: Immediately.

4 THE COURT: Do you wish that motion prior
5 to the selection of the --

6 MR. LAWLER: I prefer it before we select
7 the jury.

8 THE COURT: All right. We will have the
9 motion to suppress.

10 MR. KORNBLUM: May I -- your Honor, I
11 represent Mr. Valenzuela, who has already
12 pleaded guilty.

13 THE COURT: He hasn't arrived.

14 MR. KORNBLUM: Isn't he downstairs?

15 THE COURT: See if he is downstairs.

16 THE CLERK: I will check.

17 THE COURT: We will have him up. He is
18 not part of the motion to suppress.

19 MR. KORNBLUM: No.

20 My name is Irving Kornblum, 15 Park Row.

21 Is he here, your Honor?

22 THE COURT: Yes, he is here.

23 (Recess taken.)

24

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